IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 360 OF 1993

WITH

CROSS OBJECTION STAMP NO. 23074 OF 1993

The State of Maharashtra ..Appellants

versus

Phiroz B. Tarapurwala ..Respondent

Mr. B. R. Patil, AGP for the Appellants - State.

Mr. R. S. Maravoor i/b. M/s. Maravoor Wamorkar & Co. for the Respondent - Claimant.

CORAM : D. G. DESHPANDE,J.

DATE : 24TH JANUARY,2005

ORAL ORDER :

1. Heard learned counsel for the Appellants - State and the Respondents - Claimants.

2. This Appeal is filed by the State challenging the enhancement of compensation from Rs.0.60 paise per sq. meter. The Cross Objection is filed by the claimants for the further enhancement from Rs.4.60 paise to Rs.7/- to Rs/8/- per sq. meter.

3. The question that was raised by the learned AGP as to whether the court can award compensation more than what is claimed. The learned counsel for the respondent - claimant relied upon the judgment of the Supreme Court reported in **AIR 1985 Supreme Court 1576 Bhag Singh and others vs. Union Territory of Chandigarh.** In that case Supreme Court has clearly held that the Division Bench and the Single Judge of the Punjab and Haryana High Court should have allowed the appellants to pay deficit court fees and then should have awarded to them compensation at the higher rate or rates determined by them. In view of this judgment, it is clear that even though Notification in the present case under Section 4 is of 4.2.1970 the claimant should be entitled to claim compensation more than what is demanded by him in his Reference.

4. The lower court in paragraphs 13 and 14 has relied upon three sale instances where the price was Rs.6.50 per sq. meter in Sale deeds Exhibit 10/1, 11/2 and 11/3. Therefore in all the sale instances from the same village price was Rs.6.50 per sq. meter. The court also came to the conclusion that the market rate of the lands at Gothivali located very near from Thane-Belapur Road must be Rs.6.50 per sq. meter but the court awarded Rs.4.60 sq. meter only because that was what was asked for by

the claimant. The lower court considered the question at length whether the claimant could be granted more than what he has asked from the court and came to the conclusion against the claimant that he could not be awarded more than what was prayed by him. However, this judgment of the Supreme Court is very clear on this point and therefore in view of this matter, I do not find any reasons to allow the appeal filed by the State for reduction of the compensation. But the cross objection filed by the claimant is required to be allowed. I therefore pass the following order:

ORDER

Appeal No. 360 of 1993 filed by the State is dismissed.

Cross Objection Stamp No.23074 of 1993 is partly allowed. Claimant will be entitled to Rs.7/- per sq. meter as compensation and consequential increase in the benefits. No order as to costs in the circumstances.

24.1.2005 (D.G. DESHPANDE,J.)